IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-513

LOS ALAMOS SCHOOL BOARD, *Petitioner,*

v.

HARRY WUGALTER, Chief of Public School Finance Division of the Department of Finance and Administration; VINCE MONTOYA, Director of the Dept. of Finance and Admin., LEONARD J. DELAYO, Superintendent of Public Instruction of the State of New Mexico, JESSE D. KORNEGAY, State Treasurer of the State of New Mexico, *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion of the court of appeals is reported in 557 F.2d 709 (10th Cir. 1977). The order of the court below denying Petitioner's motion for a rehearing *en banc* or alternatively for a rehearing is not reported. The Court rendered no opinion with the order.

The opinions of the District Court finding for the Petitioner, granting the relief requested, and dismiss-

ing defendants' third-party claims against certain federal officials are not reported.

RESTATEMENT OF THE QUESTION PRESENTED

Contrary to Petitioner's assertion in its statement of the question presented, New Mexico has not reduced its funding of the Los Alamos School District. Under the challenged subsection Los Alamos has received more state school support each year than in any previous year. The only absolute reduction in school funding which Los Alamos has experienced has been a reduction in federal funding. Accordingly, the questions properly stated are as follows:

Does the Atomic Energy Community Act prohibit New Mexico from providing state school funds to Los Alamos on a different basis than it provides school funds to poorer districts?

Alternatively, does the Atomic Energy Community Act require New Mexico to match increases in its funding to poorer school districts with commensurate increases to Los Alamos, the wealthiest district in the State?

RESTATEMENT OF THE CASE

The Los Alamos School Board's statement of the case requires amendment and enlargement because it fails to discuss the following relevant aspects of the case:

Because the ability to raise revenues from local tax sources has traditionally varied across local school districts throughout New Mexico, substantial disparities

in educational opportunities and educational expenditures have existed among these local school districts. The 1974 State Legislature took an important step to alleviate the inequitable conditions found in the State by adopting an "equalization funding formula" that would insure that no child would be penalized by virtue of his residence in a poor school district. N.M. Stat. Ann. § 77-6-19 *et seq.* (1975 Interim Supp.)

Although that funding formula is highly complex in operation, its purpose and philosophy are simple. Rather than arbitrarily provide State funds to local districts on a per capita or per student basis, without recognition for local need, the new State formula begins by deriving a need factor for each district. This need factor is the difference between the cost of operating programs in the particular district (taking into account, for example, teacher salaries), and subtracting therefrom the amount of local funds available. (Although every school district taxes at the maximum legal rate, the amount of revenues generated by each district is highly disparate as a result of *inter alia* differing property values.) The funding formula, then, guarantees to each district that the amount of state funds it receives will be the difference between its program costs and the local monies available. In this way, the State funding acts to "equalize" differences among wealthy and poor districts; thus, where there are two districts with the same need factor, the poorer district will receive more State funds.

While the equalization funding formula contemplates conditions found in all other local school districts within the State, the Legislature determined that the formula would be wholly inapplicable to the unique

conditions found in Los Alamos. Los Alamos is not only the wealthiest school district in the State, but its wealth results from the infusion of funds pursuant to the Atomic Energy Community Act of 1955, 42 U.S.C. §§ 2301-94 (1976). As a result, should Los Alamos have been funded in accordance with the general provisions of the equalization funding formula, this would have entailed Los Alamos receiving a windfall and have completely thwarted the purposes of the equalization formula. District Judge M chem identified this inherent problem in his Opinion:

> "One inharmonious aspect of the two funding schemes is that federal funds are used to retain highly qualified and experienced teachers gives the school district a higher teacher training and experience factor, thereby increasing the state's equalization guarantee."

Tr. Vol. I at 343.

To remedy the problem, the Legislature enacted a separate provision to the formula (N.M. Stat. Ann. § 77-6-19(G) (Interim Supp. 1975)) to insure that Los Alamos would be treated fairly while allowing the goals of the formula to be realized. This separate provision provided that Los Alamos would continue to receive adequate State funding by insuring an increase in funding to match increased enrollment for 1974-75 school year (the first year of the new equalization funding formula) and additional increases in subsequent years to match both increases in enrollment and increases in program costs.

Plaintiff School Board contends the different method of funding Los Alamos School District violates the Atomic Energy Community Act of 1955 and is therefore unconstitutional under the Supremacy Clause. Defendants submit, as the Tenth Circuit held, that absent a showing of congressional intent which is *in fact* being frustrated by the State statute, the Supremacy Clause does not render the State statute unconstitutional.

The Los Alamos School Board cannot argue, and does not argue, that the state funding of the Los Alamos School District is unreasonably low. Its only claim is that state funding of Los Alamos is "different" from state funding of other districts. Specifically, it asserts that under the challenged subsection (N.M. Stat. Ann. §77-6-19(G) (Interim Supp. 1975)) of the New Mexico Public School Finance Act, it does not share in the increased funding which the State has appropriated for poorer districts in the State.

The primary purpose of the Atomic Energy Community Act is to maintain conditions in atomic energy communities "which will not impede the recruitment and retention of personnel essential to the Atomic Energy Program." At trial Los Alamos School Board made no showing that the challenged state funding of Los Alamos had the effect of impeding or raising an obstacle to the accomplishment of Congress' purpose in passing the Atomic Energy Community Act. In fact, the testimony of Kenneth Braziel, area manager of the Los Alamos area office of the Energy Resource Development Administration ("ERDA"), formerly the Atomic Energy Commission, that ERDA was not prepared to state that the state funding level was inconsistent with the Atomic Energy Community Act purposes. Another fact which came out at the trial at this same point is that the federal funding of Los Alamos School District decreased during the period in

question while the challenged state funding was increasing each year. Tr. of Proceedings R. Vol. IV at 29.

The record in the trial court is clear that New Mexico has not reduced its funding to the Los Alamos School Board in any year as a result of adoption of the challenged statute. Indeed, New Mexico has continued to fund the Los Alamos School District at a high level in comparison to most districts in the State. Tr. of Proceedings, R. Vol. IV at 62-70; Defendant's Exhibits G, H, I, J, K, L; R. Vol. II at 398-403. In fact, New Mexico actually *increased* while the federal government has *reduced* its funding to Los Alamos in the year in question. Tr. of Proceedings R. Vol. IV at 29.

REASONS FOR DENYING THE WRIT

I

GIVEN CONGRESS' COMPLETE SILENCE WITH RESPECT TO THE RELATION BETWEEN THE ATOMIC ENERGY COMMUNITY ACT AND STATE EDUCATIONAL FUNDING, CHIEF JUDGE LEWIS' DECISION WAS A CORRECT INTERPRETATION OF THE LAW AND LED TO A FAIR AND EQUITABLE RESULT.

The present case involves the interpretation of two statutes: the Atomic Energy Community Act of 1955 ("AECA") and the New Mexico Public School Finance Act. Neither Act has been interpreted by any court previously.

Chief Judge Lewis, speaking for the Tenth Circuit Court of Appeals, held that the efforts of New Mexico to accommodate to its unique school funding problem did not contravene the AECA. In so doing, he recognized that the district court had failed to comprehend that there can be no Supremacy Clause violation unless

the State statute actually impedes an express federal purpose. After reviewing the facts and the state and federal laws Chief Judge Lewis stated that:

> "We are reluctant to strike down state legislation in the face of complete congressional silence. . . ."

He gave four primary reasons why the challenged state statute does not offend the Supremacy Clause:

> "[P]laintiff made no attempt to show that New Mexico's level of funding has impeded or would impede the recruitment or retention of necessary personnel;
>
> subsection 19(G) [the challenged statute] provides for increases in state aid as plaintiff's enrollment and program costs increase;
>
> the New Mexico statutory scheme does not impair Congress' policy of completely removing itself from the managing and funding of atomic energy communities since plaintiff would be eligible for increased state aid if AECA funds were terminated; and
>
> *in San Antonio* [*Independent*] *School District* v. *Rodriguez*, 411 U.S. 1, 42, the Supreme Court emphasized that state school finance laws 'should be entitled to respect.' "

The only point raised by Petitioner to support its request that this Court grant a writ of certiorari is the contention that the Court of Appeals' decision is "wholly inconsistent with clear principles announced by this Court" in several other cases. Petition, page 6. To hold, as Petitioner requests, that the State law contravenes the Supremacy Clause would be to go much further than Congress has chosen to in the AECA. Any decision other than that rendered by Chief Judge

Lewis based on the facts of this case would be contrary to the established principles articulated by this Court; none of the cases relied upon by Petitioner is to the contrary.

In support of its position, Petitioner relies upon *Kewanee Oil Co.* v. *Bicron Corp.*, 416 U.S. 470 (1974), which involved the question of whether Ohio's trade secret laws were in conflict with federal patent laws. The Court of Appeals for the Sixth Circuit held that the state law conflicted with the patent laws. This Court reversed on the ground that the area of trade secret protection was not pre-empted by the federal patent laws.

Far from being authority for Petitioner's point of view, *Kewanee* is strong authority for the position being advanced here by Respondents. In holding as it did, this Court stated:

> "Congress, by its silence over these many years, has seen the wisdom of allowing the States to enforce trade secret protection. Until Congress takes affirmative action to the contrary, States should be free to grant protection to trade secrets."

416 U.S. at 493.

This analysis was correctly followed and applied by Chief Judge Lewis in his Opinion in the present case. Congress has not specified any purpose which has shown to be contradicted by the State law and until Congress does take such action the State law is "entitled to respect." *San Antonio* [*Independent*] *School District* v. *Rodriguez*, 411 U.S. 1 (1973). As Chief Judge Lewis stated this same point in the present case, "We are reluctant to strike down state legislation in the face of complete congressional silence. . . ."

None of the other cases relied upon by Petitioner are availing. For example, in *Hines* v. *Davidowitz*, 312 U.S. 52 (1941), suit was brought to enjoin the enforcement of the Pennsylvania Alien Registration Act, which required aliens to register in a manner wholly different from the federal registration requirements for aliens. The question addressed by this Court in the *Hines* case was whether Congress, in adopting a comprehensive federal statute for regulation of aliens, precluded state action such as that taken by Pennsylvania. Concluding that the federal law was a "single integrated and all embracing system" for the regulation of aliens, the Court stated the Pennsylvania Act could not stand:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. And in that determination, it is of importance that this legislation is in a field which affects international relations, the one aspect of our government that from the first has been most generally conceded imperative to demand broad national authority."

312 U.S. at 67-68.

In light of the circumstances in the *Hines* case, it is difficult to see how Petitioner can cite the case as authority for its position here. In *Hines* the subject of the state legislation invaded foreign affairs, an area originally intended to be handled at the national level. In the present case the subject of the state legislation is school funding, a subject recognized by this Court in *San Antonio Independent School District* v. *Rodriguez*, 411 U.S. 1 (1973) to be an area of concern traditionally left to the states and where state statutes

"should be entitled to respect." Similarly, in the *Hines* case both the federal and State statutes attempted a comprehensive regulation of the same area of concern, *i.e.*, activities of aliens. In the present case the State statute attempts to allocate State school funds equitably among districts with consideration for the unique conditions of each, while the federal statute is nothing but a broad authorization to a federal agency to make funds available to local governmental entities as the federal agency determines they are needed. By no stretch of the imagination can the conflict between state and federal law which was present in the *Hines* case be identified here.

Petitioner's reliance upon the case of *Perez* v. *Campbell*, 402 U.S. 637 (1971), as authority for its claim that Chief Judge Lewis' decision is incorrect, is also misplaced. The *Perez* case involved a challenge to part of Arizona's motor vehicle safety responsibility statute on the basis that it contravened the federal Bankruptcy Act and was therefore unconstitutional. The portion of the state statute which was ultimately declared by the Court to be in violation of the Supremacy Clause was the section which said that an uninsured motorist's license and registration could be suspended if a judgment against the motorist remained unsatisfied for 60 days, and that was the case even if the judgment had been discharged in bankruptcy. The Court concluded that the purpose of the state statute was to protect the public from financially irresponsible drivers and that continuing to deny driving privileges to such persons contradicted the purpose of the Bankruptcy Act, *i.e.*, to "give debtors a new opportunity in life and a clear field for future efforts, unhampered by the pressure and discouragement of pre-existing debt." 402 U.S. at 648.

The *Perez* case is easily distinguishable from the present case in that it involved a state and federal statute with clearly contradictory purposes. The federal law was intended to give debtors a new start while the state law was intended to continue denying them the right to drive until they had satisfied their previous debt. In the present case the purpose of the federal law is to provide additional funds to the Los Alamos School District over and above the level as guaranteed by the State provision. The fact that the State statute takes into consideration the effect of federal law in attempting to carry out its purpose does not create a conflict between the two statues.

The most recent case cited by Petitioner which is claimed to be in conflict with Judge Lewis' decision is *Jones* v. *Rath Packing Co.*, —— U.S. ——, 97 S. Ct. 1305 (1977). In the *Jones* case, the State of California ordered packages of bacon and flour removed from sale because their net weight was less than the net weight stated on the packages, in violation of a California weight labeling statute. Suit was brought to enjoin the California officials from enforcing the state law. The federal district court enjoined enforcement of the law on the basis that as applied to the bacon it contravened the provisions of the Wholesome Meat Act and as applied to flour it contravened the Fair Packaging and Labeling Act. The decision was upheld by the Court of Appeals for the Ninth Circuit and was later affirmed by this Court.

The federal statutes involved in the *Jones* case are anything but analogous to the federal statute involved here. In the *Jones* case both federal statutes contained specific provisions invalidating state legislation which

imposed "different" requirements. In the Atomic Energy Community Act there is no language which can be construed as setting forth congressional intention on how the Act is to be accommodated with state law. The precise language of the statutes involved in the *Jones* case is conspicuously absent from the federal law which Petitioner would rely upon in this case. Also it should be pointed out that the congressional purpose of establishing uniformity in packaging so that valid comparisons could be made by customers was being frustrated in the *Jones* case. No such federal purpose is contained in the Atomic Energy Community Act and no evidence was presented that the State statute being challenged would frustrate any federal purpose in the present case.

This brief review of the four cases relied upon by Petitioner clearly demonstrates that they offer no support for reversal of Chief Judge Lewis' decision. In each of the four cases this Court adhered to the principle that, "the historic police powers of the States were not to be superceded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). There is no "clear and manifest purpose of Congress" to invalidate New Mexico's state statute providing for distribution of state school funds. In fact, the federal legislation relied upon by Petitioner contains no purpose which New Mexico's action has been shown to frustrate. Chief Justice Lewis' decision does not conflict with prior decisions of this Court and there is no basis in any prior decision which would justify issuing the writ of certiorari requested by Petitioner.

II

THE ISSUE PRESENTED BY THIS CASE REGARDING THE INTERPRETATION AND ALLEGED CONFLICT BETWEEN TWO STATUTES IS NOT SUFFICIENTLY IMPORTANT TO MERIT THIS COURT'S CONSIDERATION.

This case involves the interpretation of a federal statute which never before has been the subject of judicial interpretation and which, by its own language, has application only to three school districts in the nation. (The AECA was passed in 1955 to provide for the unique situation caused by the federal government ownership and mangement of two communities, Oakridge, Tennessee and Richland, Washington; in 1962 the legislation was amended to cover Los Alamos, New Mexico as well.) The case also involves the interpretation of a state statute which has application to no one but the Plaintiff School District. Similarly, the factual context in which the case arises is complex and unique, since the challenged state statute is an attempt to accommodate state law to a peculiar situation while still carrying out the purposes of the state law, *i.e.*, to increase and equalize funding among poor districts in the state.

In exercising its sound judicial discretion, this Court should give adequate recognition to the uniqueness of the factual and legal context in which this case arises. The "special and important reasons" generally put forward to this Court as a basis for issuance of a writ of certiorari are totally lacking in this case.

CONCLUSION

For the reasons stated this Court should decline to review this case by writ of certiorari.

Respectfully submitted,

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DATED: November 3, 1977